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Supreme Court, U.S
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# SUPREME COURT OF THE UNITED STATES

DENNIS G. KRAL, ARESS WILSON,
MARY BEACH, SHEILA BLOCKSON,
DWIGHT WILSON, & DARREN SMITH,
ERUDITE, INC.
*Petitioners.*

v.

CITY OF CHICAGO
*Respondent.*

**On petition for writ of Certiorari to the Supreme Court of Illinois**

## Petition for Writ of Certiorari

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## QUESTIONS PRESENTED

Does a one time service of summons and complaint by regular mail sent by the City of Chicago in a building code violation case generating fines that can reach $50,000.00, provide adequate Constitutional Due Process notice to defendants when such defendant deny receipt?

Is Due Process provided to those same defendants when the City of Chicago relies solely upon its own certification that summons and complaint was deposited with the U.S. Postal Service in refusing to vacate a default judgment while excluding all witness testimony and any supporting evidence to the contrary?

## OPINION BELOW

The trial court made no written opinion in dismissing the Petitioners' various amended complaints. The appellate court of Illinois ruled that a notice sent by mail was sufficient to provide due process notice for service of summons and complaint and that the City need only attempt service. (Pet App 1) The Appellate Court also ruled that a certificatn that summons and complaint were deposited in the mail is sufficient in itself to guaranty proper notice. The Illinois Supreme Court on January 26, 2011 denied Petitioners' petition to appeal without comment. (Pet App 25)

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## Petition for Writ of Certiorari

## JURISDICTION

The Illinois Appellate court entered its judgment on September 3, 2010 affirming the dismissal of Petitioners' complaint claiming lack of due process in the City's administrative hearing court rooms. The Petitioners filed a timely petition for leave to appeal to the Illinois Supreme Court On January 26, 2011 the Illinois Supreme Court entered its order denying the Petitioners' petition for leave to appeal. This court has jurisdiction under 28 U.S.C Sec. 1257.

## FACTUAL STATEMENT

The Petitioners filed a class action complaint in the Circuit Court of Cook County, Illinois, alleging that the City of Chicago has established procedures under the Illinois State municipal code, Chapter 65, regulating administrative hearings to handle violations of its municipal codes; including building code violations that fail to provide due process notice to property owner defendants.

The City's procedure, as set for that purpose, provides that service of summons and complaint upon individual property owners may be made by placing summons and complaint in the mail by regular postal delivery.

If the property owner does not appear at the administrative hearing date listed in the mailed summons, a default judgment is automatically entered for the full amounts claimed in the complaint; these judgments are routinely entered for thousands of dollars, with a maximum limit of $50,000.00. There are no further attempts to provide notice to these property owners.

Once the default judgments are entered, the judgment is sent to a private collection firm to collect the amount due.

When the property owner learns of the judgment, (usually when that person's bank accounts are garnished) and files a motion to vacate that judgment, when the motion is heard, the only parties present are the property owner and his or her witnesses. The City presents no witnesses. The Petitioners alleged in their complaint that the hearing officers, hired by the City, are instructed by the City that mailing the summons guarantees delivery. If the property owner testifies that the property is his residence, he or she cannot vacate the judgment. This is true even if he or she testifies that they were out of town, on vacation, or in the armed services. One party related in the Petitioners' complaint, that she was in a nursing home for four months, during which a default judgment was entered against her and the administrative hearing officer refused to vacate a default

judgment exceeding $10,000.00. Also, the resident defendants are not allowed to testify that the building violations did not exist or repairs were completed. The hearing officer has been instructed by the City that the certificate of mailing guarantees service, and the hearing officer cannot accept any testimony opposing the written statement in the file.

The complaint further alleges that the Mayor and Aldermen have complained of the city's poor postal service as "the worst in the country". (Pet App 1c)

The complaint further alleges that there are thousands of default judgments entered every year against property owners, where the City presumes said property owners reside. The City makes no attempt to verify a defendants address before collection proceedings begin on these default judgments.

## STATEMENT AND ARGUMENT

The City of Chicago was given the authority to handle its own administrative court system under Illinois Statute 65 ILCS 1 et seq. The statute provides for process and notice to defendants in administrative hearings. That section 1-2.1-5 in pertinent part as follows: "(a) Any ordinance establishing a system of administrative adjudication, pursuant to this Division, shall afford parties due process of law, including notice and opportunity for hearing. Parties shall be served with process in a manner reasonably calculated to give them actual notice, including, as appropriate, personal service of process upon a party or its employees or agents; service by mail at a party's address; or notice that is posted upon the property where the violation is found when the party is the owner or manager of the property." (Pet App. 22)

The City enacted an ordinance allowing itself to serve summons and complaint by personal service, overnight mail or mail, (Pet App.23) the City chose to serve summons and complaint by mail at a property owners address. To

petitioners' knowledge, only mail delivery has ever been used.

The Petitioners have argued that the state statute does not grant the City the ability to serve process on its property owners by a one time mailing of summons and complaint in a money judgment case.

This court on numerous occasions has reiterated the rule of law relating to the requirement of due process as provided in the Constitution. "The government must provide notice reasonably calculated under all the circumstances to appraise the interested parties of the pendency of the action and afford them an opportunity to present their objections." *Jones v. Flowers*, 547 U.S. 220 (2006) citing *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306.(1950) Although, while the State Statute only states "reasonable notice", it does require that the notice given provide due process.

In *Greene v. Lindsey*, 456 U.S. 444,(1982) this court succinctly stated the requirements of due process: "The fundamental requisite of due process of law is the opportunity to be heard. And the 'right to be heard has little reality of worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest,' Mullane, id, at 314. "Personal service guarantees actual notice of the pendency of a legal action; it thus represents the ideal circumstance under which to commence legal proceedings against a person, and has traditionally been deemed necessary in actions styled in personam." *McDonald v. Mabee*, 243 U.S. 90, 92 (1917)."

The court further stated: "due process requires that a defendant receive sufficient notice reasonably calculated to apprise him of the action and afford him the opportunity to be heard. "In a proceeding where a person's right or interest in life, liberty, or property is affected, due process requires that the person be served with adequate notice, be apprised by a definite charge, and be afforded an opportunity to defend that interest in a fair and impartial hearing that is appropriate to the nature of the case."

This court in *Greene v. Lindsey* id.further explained: "When notice is a person's due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it. The reasonableness and hence the constitutional validity of any chosen method may be defended on the ground that it is in itself reasonably certain to inform those affected*** or, where conditions do not reasonably permit such notice, that the form chosen is not substantially less likely to bring home notice than other of the feasible and customary Substitutes." *Mullane v. Central Hanover Bank & Trust Co.,* 339 U.S. 306, 315, 94 L. Ed. 865, 874, 70 S. Ct. 652, 657-58 (1950).

There are no cases directly stating that mail provides adequate protection under the constitution. As this court stated, personal service is customary and the usual form of service on individuals. In cases the Petitioners have cited, this court has indicated a willingness to allow notice by mail in certain specialized circumstances. For example, in *Greene vs. Lindsey*, id. personal service was attempted and failed, and a posted notice was regularly removed by children in the neighborhood. This court ruled that the plaintiff should have sent additional supplementary notice by mail.

Those key phrases styled "in personam", that service is not just a "mere gesture", must provide "sufficient notice", "guarantee", "process" and "reasonably adopted" to provide "actual notice" all provide a clear guide that a one time depositing of summons and complaint in the mail, at a cost of forty four cents, does not provide adequate protection to property owners regardless of any and all evidence to the contrary.

Mail has been used and approved in cases where, as this court has said, other proper forms of service cannot be accomplished; that a reasonable substitute service such as publication, posting, or mail may be used in specific incidences. Service of summons in all court rooms in the state of Illinois requires personal delivery or certified mail and the Plaintiff must prove service when contested. The City of Chicago has

enacted an ordinance as if it is the exception to that rule by its interpretation of the state statute Chapter 65. (Pet App 23)

There is no reason that a substituted service by mail should be used, especially where the City refuses to vacate those judgments upon reasonable grounds.

The Petitioners argue that a one time mailing of summons and complaint constitutes what this court has characterized as a "mere gesture' but further coupled with the refusal of the City to allow testimony that contravenes a certificate of mailing clearly proves that the only concern of the City is the collection of revenue regardless of any violation of the property6 owners due process rights

The Illinois Appellate Court, in its decision (Pet App 15), refers to the City ordinance that allows service by mail and identified several Illinois cases upon which it bases its decision regarding "notice". That court relied upon its determination that mail is a reasonable form of notice. The Petitioners agree that mail is in itself a reasonable form of notice in many instances but so could an automated phone call, email, or even an advertising bill board, but these forms have never been approved for service of initial jurisdictional notice requiring due process.

Mail also is used for service of motions, notice of filings, and notices of entry of orders, after jurisdiction is obtained but not as initial jurisdictional notice. The City states that "...there is no basis to think that notice required for initial summons is any different from notice of other proceedings..." (City appellate brief page 14-15). As a result, the City cites numerous cases involving notices of motions and mailed notices, where there is no constitutional protected rights involved.

The City ordinance (pet ap 23) does provide for different modes of service. The ordinance provides that service in a building code violation case shall be served by personal service, overnight mail, or mail. The City for obvious reasons has taken the easiest mode of service by mail. The Petitioners

know of no other mode of service being used in these cases other than mail.

The Illinois appellate court mentioned the rule set forth in Mullane, then discussed the reasonableness of notice by mail. The court then refers to *Tulsa Professional Collection Services, Inc. v. Pope,* 486 U.S. 478 (1988) and quoted the court, "We find mail service is an inexpensive and efficient mechanism that is reasonably calculated to provide actual notice." The difference is Tulsa was discussing notice to creditors and held that notice of probate claims was sufficient if delivered by mail to known creditors and the creditors are not parties to the proceedings pg 478.

The appellate court went on to indicate that the City need only "attempt" to notify the defendants. The court did not justify a one time service of summons and complaint and did not address the Petitioners' claim that the notice was no more than a gesture to accomplish the City's desire for revenue.

*Mullane v. Central Hanover Bank & Trust Co.,* 339 U.S. 306 which involved publication notice of accountings on common trust funds, stated: "Many controversies have raged about the cryptic and abstract words of the Due Process Clause but there can be no doubt that at a minimum they require that a deprivation of life, liberty, or property by adjudication be preceded by notice and an opportunity for hearing appropriate to the nature of the case." (Id. Page 313). Although the above cases were cited by the Petitioners in their appellate brief, the Illinois Appellate court chose only four Supreme Court cases citing Mullane, it said that Mullane stood for the proposition that the government must only make an attempt to serve defendants and that actual notice is not necessary.

The Petitioners recognize that personal service cannot be accomplished in all cases, but there must be a reasonable justification for such substituted service. The Petitioners believe that mail cannot be justified in a purely in personam cases.

The Appellate Court then cited *Jones v. Flowers* id. that the City did not have prior knowledge that property owners may not have been residing at their residence and did not receive the summons, therefore, Jones does not apply. Taking that statement to its logical conclusion, a property owner may not be within a thousand miles of his mail box (ie. He may be out of the county in the armed services) but since the City had no prior knowledge of his absence, the default judgment cannot be vacated.

Does the context of "reasonably calculated under all the circumstances" allow service of summons solely by mail? Petitioners argue that there is a clear difference between a case where a finality involving a "res" is involved. For example, a forfeiture of a liquor license or drivers license, which does not involve a property right, may allow mail service. Eminent domain cases or tax foreclosure cases, where personal service returned- not found; then publication, posting and mail service is used, after exhausting all personal service attempts. At some point in order to complete the legal process against that 'res', mail may be a reasonable alternative.

The Illinois Appellate Court cited *Dusenbery v. United States,* 534 US 161 (2002), stating that Dusenbery stood for the proposition that the city need "only 'attempt' to provide actual notice." The issue in that case was not the attempt at service, as there clearly was an attempt at service of notice. The issue was that Dusenbery denied receipt of the certified letter. The person who signed the certified receipt (at the Bureau of Prisons) could not testify, five years later, that he gave Dusenbery the notice.

Dusenbery required publication and certified mail notice in a drug forfeiture case in which cash was forfeited in the approximate amount of $14,000.00. Dusenbery knew or should have known that his money was subject to forfeiture and the case as was fashioned "in rem".

The present case involves an "in -personam" proceedings, the property owner defendant has no reason to believe that

a summons and complaint was dropped in his mail box and that a judgment amounting to thousands of dollars could be entered against him even though he may not be there to receive it.

The issue is the process itself. This court indicated that the government has the burden to prove the reasonableness of the process of serving notice. Justice Ginsberg, in the dissent in Duesenbery, reiterated that posting and publication is not sufficient for proper notice and said "The court identified mail service as satisfactory supplement to statutory provision for publication or posting, but such decisions, it bears note, do not bless mail as an adequate in-all-circumstances, substitute for personal service." Page 177 This was stated in the Petitioners' briefs and was ignored by the Illinois Appellate Court.

This court has said that personal service is the classic form of notice and has always been sufficient for adequate due process. Personal service provides evidence of not only delivery but also receipt of notice. In addition personal service provides an emphasis or attention that other forms of notice may lack,

Certified mail provides somewhat the same, evidence of delivery, receipt and attention to the defendant that action must be taken to protect his property rights. Other forms of notice do not provide such evidence. Publication and posting has been criticized, because the defendant can deny receiving such notice. Once the alleged service is denied, then the question becomes whether the procedure in place is sufficient to overcome the burden on the Plaintiff to prove delivery and receipt.

In Dusenbery, this court ruled that the process of service by publication and certified mail was sufficient for notice with the probability that the certified mail may have been delivered to Mr. Dusenbery. Factors taken into account included the probability that Mr. Dusenbery received the certified mail and a five year time period lapsed before he objected to the form of notice.

In *Weigner v. New York*, (1988) a federal appellate court decision, the notice was by publication and thirteen notices mailed to an out of state resident. Mrs. Weigner took no action before losing her property. Why did she not take action upon receipt of all those mailed notices? That could be a result of the third element of notice that personal service supplies. A mailed notice does not provide the attention or emphasis that some action needs to be taken to protect a property interest. With the present condition of the mail in the United States, with catalogs, advertising fliers, credit card applications, and the use of email it is surprising that a citizen opens his mail at all. People do not expect that failure to open their mail could cost them $50,000.00. It should be noted that the summons and complaint is sent in an envelope with a City of Chicago return address. There is no identifying mark that it is anything other than routine correspondence, notice of a special use request for a neighboring property or a water bill. (A example of the envelope is attached to the Petitioners' complaint. If the resident pays his water bill by internet, he may not open that letter. This amounts to a fine for not opening one's mail.

There is no reason to expect that if the property owner had received the summons and complaint and opened the letter that he would not have appeared to contest the complaint. This is supported by the fact that at some point all of these property owners made an attempt to vacate these judgments to no effect.

The City is playing the odds that a number of its property owners will not appear for the initial hearing date.

The City makes no attempt to explain why it sends two notices by mail, in addition to the posting of a parking ticket attached to a vehicle windshield before a default judgment is entered on a $100.00 parking ticket. But they make no further attempt on a case ten to five hundred times more in their building court. Is a parking ticket more important that what the Petitioners call routine maintenance? See factual statement in *Van Harken v. Chicago*, 906 F. Supp. 1182, N.D. Illinois (1995)

The reasonable notice requirement described in Mullane id. and *Weigner v. City of New York,* 852 F. 2d 646. requires notice as "reasonably certain" to provide such notice to interested parties. "Reasonably certain", as described in Black's law dictionary, is "more than a casual notice, ...that which is not conjecture or likelihood or even probability..." Putting all the facts alleged by Petitioners together, the one time attempt at service, the acknowledgment of poor mail delivery by the City,(see pet.app.22, 23) where the mayor and aldermen critized the mail service in Chicago and called the mail service the "nation's worst mail delivery" and "dysfunctional" (pet app 22) the number of cases where defaults are entered, and the refusal of the hearing officers to accept testimony of property owners that they did not receive the summons; clearly violates constitutional due process.

This court in *Mennenite Board of Missions v. Adams,* 462US 79(1982) 1 quoted *Mullane v. Central Hanover Bank & Trust Co.,* 339 U.S. 306 (1950) and said " Neither notice by publication and mailing, nor mailed notice to the property owner are means such as desirous of actually informing the (mortgagee) might reasonably adopt to accomplish it" page 799. In the most recent case discussing Due Process, *Jones v. Flowers,* 547 U.S. 220 (2006) the court reviewed a case where notice was sent by certified mail and returned not served. The court found that the state knew that the notice was not given and should have taken additional steps to guarantee service. This case has the same circumstances. The City acknowledged poor mail service. (Newspaper statements by the Mayor and aldermen (see Pet App 22, 23). In addition, is the sheer volume of the requests to vacate judgments, as Petitioners have claimed that every Friday is set aside, by the City, to deny the motions to vacate these judgments. The City says that the property owner has to have more evidence than mere testimony that they weren't served. This raises the difficulty of trying to prove a negative.

Aress Wilson, one of the petitioners, stated in the petitioners complaint that he testified before the hearing officer, that bought his residence from someone named

Wilson and believed that mail may have been forwarded to the wrong party. He also testified that his mail was sporadic and that he didn't receive some of his income tax information that year. Mr. Wilson also submitted the newspaper articles on the poor mail service. (Pet App 24, 25) The hearing officer stated that he found Mr. Wilson's testimony, "credible", but still refused to vacate the default judgment. Short of having the postman testify that he lost the mail down the sewer, no evidence will satisfy the City.

Rules of evidence require that the party asserting service has the burden of proof. The Arkansas Solicitor, in Jones v. Flowers, id. argued that it might as well have dispensed with certified mail and just sent notice by regular mail. Justice Roberts stated, "starting (and stopping) with regular mail." The court then said, "We find this unlikely as we have no doubt that the government repeatedly finds itself being asked to prove that notice was sent and received." Page 237 . The City of Chicago has come up with a novel and unique way to handle its proof of service conundrum. They declare that upon deposit of summons and complaint in the mail, service is guaranteed and the judgment cannot be vacated by mere testimony of the individual, even if the hearing officer believes the testimony of the property owner. The solution put forth by the City responds to Justice Robert's query of the state having to prove service. "It doesn't."

## CONCLUSION

One time attempt at service of notice and a refusal by the City to vacate any judgment based upon a certification in the file that the summons was mailed, contradicted by actual witness testimony clearly lacks Due Process of the law and the fourteenth Amendment to the United States Constitution.

The Petitioner ask that this court grant Petitioners' writ of Certiorari.

Respectfully submitted:

Dennis G. Kral, Aress Wilson, Mary Beach, Sheila Blockson, Dwight Wilson, Darren Smith & Erudite, Inc.

Dennis G. Kral,
*Attorney for Petitioners*

## APPENDIX


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Chicago SunTimes article . . . . . 25

Chicago Tribune newspaper articles . . . . . 26

## THE OPINION OF THE ILLINOIS APPELLATE COURT DATED SEPTEMBER 30, 2010

No. 1-09-1628

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| DENNIS G. KRAL, ARESS WILSON, MARY BEACH, SHEILA BLOCKSON, DWIGHT WILSON, & DARREN SMITH, ERUDITE, INC. | ) | |
| Plaintiffs, V. | ) | |
| | ) | 06 CH 2152 |
| CITY OF CHICAGO Defendants. | ) | |

### ORDER

Plaintiffs, Dennis G. Kral, Aress Wilson, Mary Beach, Shelia Blockson, Dwight Wilson, Darren Smith and Erudite, Inc., appeal from the circuit court's order dismissing their third amended complaint, pursuant to section 2-615 of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2006)). Plaintiffs' complaint alleged the City of Chicago Department of Administrative Hearings (DAH) violated the due process rights of several defendants in building code violation hearings. Specifically, plaintiffs contend several of those hearings resulted in the entry of a default order after the parties failed to appear because the parties were only notified of the administrative hearing by first-class mail, rather than by personal summons. Plaintiffs also alleged the hearing officers gave undo weight to certificates of service provided by the City when evaluating motions filed by the defendants who contested the receipt of the mailed notice in those default cases. On appeal, plaintiffs contend the trial court erred in dismissing their third amended complaint for failure to state a cause of action. For the following reasons, we affirm the circuit court's judgment.

## BACKGROUND

On October 18, 2006, Kral filed a two count complaint in the circuit court. Count I was an administrative review action contesting an administrative proceeding where a default judgment was entered against Kral. The circuit court dismissed the administrative review action,



and Kral did not renew the action in his amended complaint. The second count of Kral's complaint was a putative class action, brought on behalf of parties who allegedly have been held liable in DAH proceedings regarding building code violations without receiving actual notice. The complaint was amended three times and additional plaintiffs were added.

Wilson alleged in the complaint that an Administrative Law Officer (ALO) refused to vacate a default judgment entered against him because the City had sent notice of the hearing to the correct address, even though the ALO found credible his testimony that he had not actually received that notice. Beach alleged she telephoned the City after receiving notice of a pending hearing and was told she did not need to appear, after which a default judgment was entered against here and not vacated. Wilson, Smith and Erudite alleged a notice intended for them had been sent to the wrong address, and a default judgment was entered against them and not vacated. Blockson alleged DAH had held her in default several times, even though a case involving identical issues was being pursued against her in circuit court.

Plaintiffs' third amended complaint alleged the City's notice provisions under the Municipal Code of Chicago violated their due process and equal protection rights. The due process claim alleged service of notice of the building code violation proceeding by first-class mail was constitutionally inadequate, in part because the City knew postal service to its residents was poor. The City filed a 2-615 motion to dismiss plaintiffs' third amended complaint, which the trial court granted. Plaintiffs appeal, although they have subsequently withdrawn their equal protection claim on appeal to focus

solely on the due process issue.

ANALYSIS

Plaintiffs contend the trial court erred in dismissing their third amended complaint for failing to state a cause of action, pursuant to section 2-615 of the Code. Specifically, plaintiffs contend the City's service by first-class mail of notice of administrative hearing proceedings in cases adjudicating building code violations violates procedural due process. Plaintiffs also contend that during hearings on motions to vacate default judgments in proceedings before the



DAH, the ALOs overseeing the hearings improperly give more weight to affidavits of mailing filed by the City to establish notice than to testimony from parties that notice was not received.

A motion to dismiss brought pursuant to Section 2-615 of the Code attacks the legal sufficiency of a complaint. 735 ILCS 5/2-615 (West 2006); American National Bank v. City of Chicago, 192 Ill. 2d 274, 279 (2000). In ruling on a Section 2-615 motion, a court must accept as true all well-leaded facts in the complaint and all reasonable inferences that may be drawn from the complaint. American National Bank, 192 Ill. 2d at 279. On review of a Section 2-615 dismissal, we must determine whether the allegations of the complaint, when interpreted in a light most favorable to the plaintiff, sufficiently set forth a cause of action on which relief may be granted. Brock v. Anderson Road Association, 287 Ill. App. 3d 16, 20 (1997). We review a Section 2-615 motion to dismiss de novo. Flournoy v. Ameritech, 351 Ill. App. 3d 583, 586 (2004).

I. Notice of Hearing

"'Due process entails an orderly proceeding wherein a person is served with notice, actual or constructive, and has an opportunity to be heard and to enforce and protect his rights.'" People v. $30,700.00 United States Currency, 199 Ill. 2d 142, 156 (2002), quoting Stratton v. Wenona Community

Unit District No. 1, 133 Ill. 2d 413, 432 (1990). "Fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonable calculated, under the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." Stratton, 133 Ill. 2d at 432; Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314, 94 L. 2d 865, 873, 70 S. Ct. 652, 657 (1950). Due process does not require that the City must provide actual notice, however. $30,000.00 United States Currency, 199 Ill. 2d at 156. Instead, the concept of due process provides that the City must only attempt to provide actual notice. $30,000.00 United States Currency, 199 Ill. 2d at 156, citing Dusenbery v. United States, 543 U.S. 161, 151 L. Ed. 2d 597, 122 S. Ct. 694 (2002).

Section 1-2.1-5 of the Illinois Municipal Code (65ILCS 5/1-2.1-5 (West) provides that:

> "Any ordinance establishing a system of administrative adjudication, pursuant to this Division, shall afford parties due process of law, including notice and opportunity for hearing. Parties shall be served with process in a manner reasonable calculated to give



them notice, including, as appropriate, personal service of process upon a party or its employees or agents; service by mail at a party's address; or notice that is posted upon the property where the violation is found when the party is the owner of manager of the property."

Sections 2-14-074©) and 2-14-152 of the Municipal Code of Chicago provides that a notice of violation and/or a notice of hearing to adjudicate a building code violation may be made upon any person liable for the violation by "first class or express mail or overnight carrier to the designee and address registered with the City under chapter 13-10 of the Municipal Code." Municipal Code of Chicago, Ill. ss2-14-074©), ss2-14-152 (2008). Section 2-14-078 of the Municipal code provides that if the recipient of a notice of violation or

a notice of hearing fails to appear, the ALO may find the recipient in default. Municipal Code of Chicago, Ill. ss2-14-078 ©) of the Municipal Code, including by first-class mail. Municipal Code of Chicago, Ill. ss2-14-078 (s008).

There is no real dispute in this case that the City provided, or attempted to provide, notice of the building code violation hearings before the DAH to the plaintiffs by first-class mail, as required by the Municipal Code of Chicago and the Illinois Municipal code. The real issue in this case is whether first-class mail is sufficient to provide notice reasonably calculated, under the circumstances, to apprise interested parties of the pendency of a building code violation hearing and afford them an opportunity to present their objections.

The United States supreme Court has specifically recognized that the use of regular mail to serve notice on a party satisfies due process. In *Tulsa Professional Collection Services, Inc. V. Pope*, 485 U.S. 478,490, 99 L. Ed. 2d 565, 578, 108 S. Ct. 1340, 1347 (1988), the Supreme Court noted "We have repeatedly recognized that mail service is an inexpensive and efficient mechanism that is reasonably calculated to provide actual notice."

Use of regular mail to provide notice has also been deemed adequate by several Illinois courts. In *El Sauz, Inc. V. Daley*, 328 Ill. App. 3d 508, 519-20 (2002), this court held service of



the License Appeal Commission of Chicago's decision to suspend the plaintiff's liquor license by regular mail was reasonable calculated to proved the plaintiff with actual notice of the agency's decision. In *Guerrero v. Ryan*, 272 Ill. App 3d 945, 949 (1995), this court held that notice by regular mail to a drivers license holder's address provided by him to the Illinois Secretary of State was sufficient notice to satisfy the minimum constitutional procedural due process requirements. In *Elmhurst Stamping & Manufacturing Co.* 67 Ill. App. 3d 257, 260 (1978), the court held regular mail is a sufficient means of providing notice to creditors of the date for filing claims in a proceeding to liquidate a business and

assets. In *Village of Bensenville v. Botu, Inc.*, 39 Ill. App. 3d 634, 637 (1976), the court held regular mail was a sufficient means of providing notice of a pending police action to abate a nuisance.

As mandated by State statute and its own Municipal Code, the city mailed notice of the building code violation hearing before the DAH to the plaintiffs by first-class mail, and also mailed notice of the entry of the default judgment to the plaintiffs following their failure to appear on the hearing date. Because it was reasonable for the City to assume here that mailing a notice to plaintiffs would put them on actual notice of the building code violation proceedings initiated against them, we find providing notice of the hearings by first-class did not violate the plaintiffs' procedural due process rights. See Guerrero, 272 Ill. App. 3d at 949; *$30,000.00 United States Currency*, 199 Ill. 2d at 156-57 ("due process does not require that 'the State **must provide** actual notice, but that it **must attempt to provide** actual notice.'") (emphasis in original.)

Notwithstanding, plaintiffs contend the City was under a duty to provide additional notice beyond the mailing in this case to satisfy procedural due process. Specifically, plaintiffs contend mailing of the summons alone did not constitute sufficient notice in this case because the City had knowledge, prior to mailing the notices, of the postal services' poor reputation for mail delivery service in Chicago.

Illinois courts have recognized three situations where mailing a notice is inadequate to satisfy procedural due process: (1) when the government actually knows the party's correct address by mails the notice to the wrong address; (2) the government does not actually know, but should know, the party's correct address when it mails the notice; and (3) the government acts reasonably in initially sending the notice to a particular address; however, later developments



charge the government with knowing it is not reasonably likely that the party has received the notice. In re *Forfeiture*

*of 2,354.00 United States Currency*, 326 Ill. App 3d 9, 14 (2001). Generally, the third scenario unfolds when the original notice is returned to the government unclaimed. In re *Forfeiture of 2,354.00 United States Currency*, 326 Ill. App 3d at 14.

In this case, nothing in plaintiffs' third amended complaint suggests the City acted unreasonably in mailing the notice of summons to the plaintiffs through first-class mail. The common thread in the three scenarios noted above is that the government is either aware, or becomes aware, of the fact that the mailed notice is not reasonable likely to reach the intended party. Although plaintiffs attached several items to their third amended complaint intended to suggest the City was well aware prior to mailing the notices that mail delivery service in Chicago is notoriously poor, none of the facts alleged in the complaint suggest the City was ever specifically aware of an instance prior to the hearing date where the notice it mailed first-class did not actually reach the intended party, was sent to the wrong address even though the City knew or should have known the correct address, or was returned to the City undelivered. We find such generalized allegations of inefficiency in the postal system are insufficient to support a claim that the City acted unreasonably in mailing the notice of summons to the plaintiffs. See *Jones v. Flowers*, 547 U.S. 220, 164 L. Ed. 2d 415, 126 S. Ct. 1708 (2006); *Weigner v. City of New York*, 852 F. 2d 646, 650 (2nd Cir. 1988) ("The Supreme Court has repeatedly held that notice by first-class mail is sufficient, notwithstanding the Court's obvious awareness that not every first-class letter is received by the addressee"). Accordingly, we see no reason to disturb the trial court's dismissal of plaintiffs' claims.

II. Weight of the Evidence

Plaintiffs also contend that during the hearings on the motions to vacate the default judgments, their due process rights were violated because the ALO improperly placed more evidentiary weight on the City's affidavits of mailing than on testimony from the individuals themselves that they did not receive notice of the original hearing.

In rejecting plaintiffs' contention, we recognize the City correctly notes "(s)service of a document by mail is not invalid merely because the party to be served denies receiving it."

1-09-1628

*Ingrassia v. Ingrassia,* 156 Ill. App 3d 483, 501 (1987). When the record contains written proof of mailing, a party cannot overcome that proof merely by denying receipt. Montalbano Builder, Inc. V. Rauschenberger, 341 Ill. App. 3d 1075, 1078 (2003). As our supreme court has noted, "(i)f proper giving of notice can now be frustrated by the mere allegation of the defendant that he did not receive it, then the giving of notice by mail cannot be relied upon even though the rules specify such method." *Bernier v. Schaefer,* 11 Ill. 2d 525, 529 (1957).

Accordingly, we see no reason to disturb the trial court's findings in this case.

CONCLUSION

We affirm the trial court's order dismissing plaintiffs' third amended complaint.

Affirmed.

Howse, J., with Fitzgerald Smith, P.J., and Toomin, J., concurring.

## ORDER OF THE ILLINOIS SUPREME COURT DATED JANUARY 26, 2011.

No: 111291

| | | |
|---|---|---|
| DENNIS G. KRAL, ARESS WILSON, MARY BEACH, SHEILA BLOCKSON, DWIGHT WILSON, & DARREN SMITH, ERUDITE, INC. | ) | |
| Plaintiffs, | ) | |
| V. | ) | |
| | ) | 06 CH 2152 |
| CITY OF CHICAGO | ) | |
| Defendants. | ) | |

ORDER

Leave to appeal from the appellate court First District is denied.

Entered:
January 26, 2011

## ILLINOIS MUNICIPAL CODE 65 ILCS 5/1-2.1-5

**65 ILCS 5/1-2.1-5**

Sec. 1-2.1-5. Administrative hearing proceedings.

(a) Any ordinance establishing a system of administrative adjudication, pursuant to this Division, shall afford parties due process of law, including notice and opportunity for hearing. Parties shall be served with process in a manner reasonably calculated to give them actual notice, including, as appropriate, personal service of process upon a party or its employees or agents; service by mail at a party's address; or notice that is posted upon the property where the violation is found when the party is the owner or manager

of the property. In municipalities with a population under 3,000,000, if the notice requires the respondent to answer within a certain amount of time, the municipality must reply to the answer within the same amount of time afforded to the respondent.

(b) Parties shall be given notice of an adjudicatory hearing which includes the type and nature of the code violation to be adjudicated, the date and location of the adjudicatory hearing, the legal authority and jurisdiction under which the hearing is to be held, and the penalties for failure to appear at the hearing.

c) Parties shall be provided with an opportunity for a hearing during which they may be represented by counsel, present witnesses, and cross-examine opposing witnesses. Parties may request the hearing officer to issue subpoenas to direct the attendance and testimony of relevant witnesses and the production of relevant documents. Hearings shall be scheduled with reasonable promptness, provided that for hearings scheduled in all non-emergency situations, if requested by the defendant, the defendant shall have at least 15 days after service of process to prepare for a hearing. For purposes of this subsection ©), "non-emergency situation" means any situation that does not reasonably constitute a threat to the public interest, safety, or welfare. If service is provided by mail, the 15-day period shall begin to run on the day that the notice is deposited in the mail.

(Source: P.A. 94-616, eff. 1-1-06

## MUNICIPAL CODE OF THE CITY OF CHICAGO, SERVICE OF NOTICE IN A BUILDING CODE VIOLATION CASE.

2-14-152 **Service of Notice to building owner.**

(a) The date for a hearing to adjudicate a building code violation shall not be less than 30 days after the violation is reported by the building inspector in non=emergency situations; the date for the hearing in emergency situation may be scheduled in accordance with Section 2-14-074.

(b) Service of a notice of violation and/or notice of hearing to adjudicate a building code violation may be made upon any person liable for the violation under this code; or his or her registered designee for service under Chapter 13-10 of this code; by (i) personal service; (ii)first class or express mail or overnight carrier to the designee and address registered with the city under Chapter 13-10 of this code; or (iii) first class or express mail or overnight carrier to the residence or place of business of the person liable for the violation, if service under subsection (b) (ii) is found to be undeliverable or if the building or structure is not registered or subject to registration under Chapter 13-10 of this code.

## CHICAGO SUN TIMES ARTICLE JUNE 2007.

**Daley on mail: Feds are 'dysfunctional'**

Don't get Mayor Daley started on Chicago having the nation's worst mail delivery.

To him, it's yet another symptom of a more serious disease: a "dysfunctional" federal government.

"I'll write a book on the federal government. It's basically become a dysfunctional organization. Everybody knows that. Go to the federal response to Hurricane Katrina. Go to the Iraq situation. Everything we do with the federal government - it's so far afield from having real customers," Daley said.

"Washington D.C., is like a...foreign land for us. It's so far afield that it has no relationship to us - the average person. It just represents the fact that the government is just too, too, too big."

The Chicago Sun-times reported Sunday that Chicago's in town, overnight service delivery is the worst in the nation and affects almost every neighborhood.

U.S. Postmaster General John Potter responded with a promise to hire 100 extra mail carriers and establish community advisory committees to address local complaints.

"You will start seeing change...in the next couple of weeks," Deputy Postmaster General Patrick Donahue told the Sun-Times Monday after touring the Jackson Park and Fort Dearborn post offices.

**CHICAGO TRIBUNE ARTICLE DATED JUNE 1, 2007**
**METRO SECTION**
**FRIDAY, JUNE 1, 2007**

## Record at root of mail troubles

Records that Chicago postal workers use to deliver the mail contain more that 84,000 errors-one of the major reasons mail delivery in the city is such a mess, postal officials told a congressional subcommittee Thursday.

Faulty records, outdated equipment, poor supervision and the "overall work culture" were among the explanations provided for the decline of Chicago's mail operation, which U.S. Postmaster John Potter dubbed the worst in the nation when he visited in April.

Potter visited Chicago again Thursday to report that the office here is in the midst of hiring 200 additional letter carriers, analyzing routes and updating equipment.

"We're renewing our focus on the basics," he said.

About 140 postal experts from across the nation have been assigned to analyze every aspect of the city's operation. They have walked about half of the city's routes so far and found that thousands of addresses on file are incorrect, Potter said.

Potter was joined by disgruntled customers, union leaders, local politicians and business owners Thursday morning at the Dirksen U.S. Courthouse to testify before the House Subcommittee on Federal Workforce, Postal Service and District of Columbia, chaired by U.S. Rep. Danny Davis (D-Ill.)

Davis, who was a postal clerk in 1961, said he wanted the top local executives to testify last at the hearing so they could hear the litany of complaints from people fed up with Chicago mail delivery.

Dave Barlow moved into his Albany Park home 10 years ago and told the panel he still receives mail for the house's previous occupant. His neighbors had mail delivered twice in a three-week span, he said.

Phyllis Unosawa said she's tired of receiving social invitations after the date of the event has passed and getting

two or three issues of a magazine at once.

And Karen Furnweger of the Shedd Aquarium, said some Shedd members received a seasonal newsletter two months after it had been mailed.

"Whether the customer is a not-for-profit museum or a Michigan Avenue store using bulk mail, neither one is getting its money's worth on postage these days," Furnweger said at the hearing.

U.S. Rep Jan Schakowsky (D-Ill.) Said her office has heard from 120 frustrated postal customers in 2007.

"The list of grievances seems endless," she said, noting they ranged from missing paychecks to late credit-card bills and license-plate stickers.

Mary Beth Awerkamp, elections operation manager for Cook County Clerk David Orr, told the subcommittee the clerk's office mailed hundreds of sample absentee ballots this spring and more than 10 percent took a week or more to arrive at their destinations.

Gloria Tyson, Chicago Postmaster since October 2006, said after the hearing that she appreciated the opportunity to hear again what customers need fixed.

New letter carriers are out on routes and are returning to their delivery offices earlier, Tyson said. She's hired additional customer service supervisors and is developing customer advisory councils that elected officials can contact with concerns.

These are good steps, said Gordon Milbourn, of the Postal Service's Office of the Inspector General, which is conducting a full audit expected to be release this summer.

For several weeks, inspectors have observed delays in processing about 2 million pieces of mail each day and groups of employees standing idly around plants, he said.

Inadequate supervision, poor planning and training and a "lack of urgency" by some employees are the broad causes of current problems, he said.